

June 21, 2000

**Record of Environmental Review on the Proposed Rule:
National Flood Insurance Program
Inspection of Insured Structures by Communities**

I. Description of the Proposed Action

The notice of the proposed rule for the Inspection of Insured Structures by Communities in the National Flood Insurance Program (NFIP) was published in the Federal Register on May 5, 1999. In the notice, we stated that we would review the proposed rule under the requirements of 44 Code of Federal Regulations (CFR) 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act (NEPA) and associated statutes before we publish the final rule. We also stated that we would review the proposed rule under Executive Order 12898, Environmental Justice, before we publish the final rule. This document is a record of these reviews.

The inspection procedure was proposed as an additional tool to help the communities of Monroe County, Florida and the Village of Islamorada, also in Monroe County, verify that structures with ground level enclosures below the lowest floor of elevated structures comply with the community's floodplain management ordinance. It was also proposed as a means to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The inspection procedure would require owners of insured structures identified as a possible violation to obtain an inspection from community floodplain management officials as a condition of renewing the Standard Flood Insurance Policy (SFIP) on the building. FEMA proposed to undertake the inspection procedure on a pilot project basis in two communities, Monroe County, Florida and the incorporated Village of Islamorada, located in Monroe County.

The inspection procedure would apply only to NFIP post-FIRM (Flood Insurance Rate Map) insured structures in the Special Flood Hazard Areas (SFHAs) of Monroe County and the Village of Islamorada that are identified as a possible violation of the communities' floodplain management ordinance. Post-FIRM structures are structures constructed after the effective date of the initial FIRM. Under the NFIP, all new construction and substantial improvements of pre-FIRM structure built after the effective date of the initial FIRM or after December 31, 1974, (whichever is later) must meet the minimum requirements of the NFIP Floodplain Management Regulations. For Monroe County and the Village of Islamorada, all new and substantially improved buildings constructed after December 31, 1974 are considered Post-FIRM.

It is estimated that there are 2,000-4,000 insured post-FIRM structures that are a possible violation of the community's floodplain management ordinance in both Monroe County and the Village of Islamorada. The estimate of possible violations is based on a Community Assistance Visit by the FEMA Region IV office and discussions with local officials. Some of the 2,000-

4,000 buildings may be determined to be compliant under the NFIP and the community's floodplain management ordinance.

The possible violations pertain to the use of the enclosed area below the Base Flood Elevation of an elevated building in the SFHA for something other than parking, building access, or storage. The uses below the Base Flood Elevation are limited to parking, access, and storage to minimize the damage potential to the building and the potential for loss of life. The enclosures are also considered non-compliant if they are not built with flood resistant materials, have mechanical, electrical, and other utilities that are not protected to the Base Flood Elevation, or do not have proper openings in the A zone or breakaway walls in the V zone.

The communities would undertake a review of all pre-FIRM flood insurance policies in SFHAs to confirm that the start date of construction or substantial improvement of insured pre-FIRM buildings occurred on or before December 31, 1974. Monroe County and the Village of Islamorada would identify possible violations of insured post-FIRM buildings in SFHAs from a review of all post-FIRM flood insurance policies in SFHAs in conjunction with a review of local permit files, tax records, other documents on file in the community and a visual street inspection of the building. Based on this review, the community would provide to FEMA a list of insured buildings that the community identifies as a possible violation. Only those buildings with possible illegal enclosures would be required to obtain an inspection.

For those post-FIRM structures identified by the communities as a possible violation, the insurer will send a notice to the policyholder that an inspection is necessary in order to renew the policy and that the policyholder must submit a community inspection report as part of the policy renewal process. Policyholders of these insured structures would be required to obtain an inspection report from their respective communities as a condition of renewing the flood insurance policy on the building. For insured post-FIRM structures that the community inspects and determines violate the community's floodplain management regulations, the community must undertake measures to remedy the violation, to the maximum extent possible, in compliance with the community's floodplain management ordinance.

II. Background on the Development of the Inspection Procedure

Monroe County, Florida is the southernmost county in the State of Florida and the continental United States and includes the islands of Florida Keys. The Village of Islamorada is located in Monroe County, Florida and is a separate NFIP participating community encompassing approximately an 18 mile segment within the upper half of the Keys. The entire portion of the County that is located on the mainland Florida peninsula, along with islands located in Biscayne Bay and the northern part of Florida Bay, are a part of the Everglades National Park. Nearly all of the development and population in Monroe County is located in the Florida Keys.

Almost the entire area within Monroe County, including the Village of Islamorada, is designated in the SFHA. Only small areas of Key Largo, Cotton Key, and Upper Matecumbe Key have areas with ground elevations high enough to be outside the SFHA. Areas designated as SFHAs on the FIRMs are based on a flood that would have a one-percent chance of being equaled or exceeded in any given year (also referred to as the 100-year flood or Base Flood). The one-percent annual chance flood are shown on the FIRMs as A Zones or V Zones. We have identified

V zones, which are associated with velocity and wave action, along the coastline of Monroe County and the Village of Islamorada and designated the remaining portion of the SFHAs A Zones.

Under the National Flood Insurance Act of 1968, FEMA has the responsibility to ensure that the NFIP floodplain management requirements are effectively and properly administered at the State and local levels. Staff from the FEMA Region IV office in Atlanta, Georgia conducted Community Assistance Visits (CAV) in Monroe County in 1982, 1987, and again in August 1995. A CAV is a scheduled visit with an NFIP community for the purpose of conducting a comprehensive assessment of the local floodplain management program and to assist the community in understanding and implementing effective flood loss reduction measures. Following each visit with Monroe County, floodplain management program deficiencies and violations were identified and corrective actions were requested. In 1995, the CAV confirmed that, while the County had corrected administrative problems identified during earlier visits, the illegal conversion of the space below the lowest floor of an elevated building to uses other than parking, access or storage had become an even more serious problem than had been identified in earlier monitoring visits.

Ignoring the problem of illegally built enclosures below elevated structures would have serious impacts. Allowing uses other than parking, building access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential for the area below the lowest floor of the elevated building and to the elevated portion of the building and increases the potential for loss of life. Furthermore, it undermines efforts by the two communities to effectively administer and enforce their floodplain management ordinance and to protect their citizens from the devastating effects of flooding. It also undermines FEMA's efforts to ensure that communities throughout the country effectively administer and enforce the minimum requirements of the NFIP.

Because of the serious nature of the violations in Monroe County, following the 1995 CAV FEMA determined that an enforcement action would be necessary in Monroe County. The primary purpose for conducting an enforcement action is to obtain compliance with the NFIP in order to reduce the potential for future flood damages and loss of life, thereby reducing disaster assistance costs, future economic loss to the individual, the community, and the nation as a whole, and improving the solvency of the National Flood Insurance Fund.

An enforcement action is a measure initiated by FEMA to obtain community compliance with NFIP floodplain management criteria by ensuring that communities correct program deficiencies and remedy past violations, enforce their ordinances for future development. The action commences when the community is notified that it will be placed on probation if the community does not correct program deficiencies and remedy violations. Probation represents FEMA's formal notification to a community that its floodplain management program is noncompliant with NFIP requirements. While probation has no effect on the availability of flood insurance, an additional charge of \$50 is added to the premium for each policy for a period of at least one year. During the period of probation, the community is required to take measures to correct program deficiencies and remedy violations to the maximum extent possible.

If the community fails to take remedial measures during the period of probation, the community may be suspended from the NFIP. When a community is suspended from the NFIP, it is subject

to the provision of Section 202(a) of Public law 93-234, as amended, which prohibits Federal officers or agencies from approving any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan, or grant (in connection with a flood), for acquisition or construction purposes within SFHAs. Further Section 202(b) of Public Law 93-234, as amended, states that, in the event of a disaster caused by a flood, Federal disaster relief assistance will not be available to any property located within the suspended community.

Probation along with program suspension are existing enforcement options established in NFIP Regulations at 44 CFR 59.24(b) and (c) that we would consider in addressing community program deficiencies and violations under the NFIP Community Compliance Program.

Rather than addressing the problem through FEMA's existing enforcement options of probation and potentially suspension from the program, we gave serious consideration to the recommendation of the Monroe County Citizens Task Force. The Task Force, appointed by the Monroe County Board of County Commissioners, recommended in 1997 establishment of a procedure to require an inspection and a compliance report prior to the renewal of a flood insurance policy. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that requested FEMA to establish an inspection procedure for the County as a means of verifying that structures insured under the NFIP are compliant with the County's floodplain management ordinance.

The Village of Islamorada incorporated as a separate community within Monroe County in January 1998 and became a participating NFIP community on October 1, 1998. The Village encompasses four of the Florida Keys that would be included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the Village of Islamorada, the community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998, in its application to join the NFIP.

III. Background on the National Flood Insurance Program

Congress created the NFIP in 1968 to provide Federally supported flood insurance coverage, which generally had not been available from private insurance companies. A major goal of the NFIP is to reduce flood losses by implementing floodplain management regulations that ensure that new and substantially improved construction in floodprone areas is protected from flood damages. The NFIP is based on a mutual agreement with communities in which FEMA will make flood insurance coverage available provided that a community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP. Community participation in the NFIP is voluntary. The emphasis of the NFIP floodplain management requirements is to reduce threats to lives and to reduce flood damages to property in flood hazard areas.

The NFIP minimum building and development regulations require that new or substantially improved residential structures in A Zones must have their lowest floor (including basement) at or above the Base Flood Elevation (the elevation of the 100-year flood). In V Zones, the bottom of the lowest horizontal structural member of the lowest floor of all new or substantially improved structures must be elevated to or above the Base Flood Elevation. These requirements are contained in both Monroe County and the Village of Islamorada's floodplain management ordinance. The NFIP floodplain management requirements are designed to protect structures

constructed in floodplains from flood damages and they also help keep flood insurance rates affordable.

In responding to the public's desire to have an enclosed area below an elevated building, but recognizing the potential risks to lives and property, the NFIP floodplain management regulations permit certain limited uses of enclosures below the lowest floor. Under the NFIP, the enclosed area below an elevated building can be used for the parking of vehicles, building access, or storage. The allowance of these uses below the Base Flood Elevation is permitted because the amount of damage caused by flooding to these areas can easily be kept to a minimum by following certain performance standards for the design and construction of these areas, such as using flood resistant building materials. To minimize flood damages, mechanical, electrical, plumbing equipment, and other service facilities must be designed and/or located so as to prevent damage during conditions of flooding.

These requirements have been adopted and are enforced by NFIP participating communities throughout the country and have been in place since the early 1970's when the program began. Post-flood disaster building performance assessments that we conduct following major flood disasters indicate that structures built to the minimum requirements of the NFIP receive minimal or no damage compared to structures that are not properly elevated or have improperly built enclosures. This is also evident in our insurance experience – approximately \$1 billion of flood damages are avoided every year as a result of NFIP and the building requirements established under the program. We also know that structures not built to program criteria suffer five times the amount of flood damage that compliant structures suffer.

Furthermore, under the Standard Flood Insurance Policy, there is very limited coverage for enclosures, including personal property contained therein. The National Flood Insurance Act of 1968 requires that FEMA charge full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later. Actuarial rating assures that the risks associated with structures in flood prone areas are borne by those located in such areas and not by the taxpayers at large. The NFIP flood insurance rates are based on the degree of flood risk. The flood insurance rates take into account a number of different factors including the flood risk zone shown on the FIRM, elevation of the lowest floor above or below the Base Flood Elevation, the type of building, the number of floors, and the existence of a basement or an enclosure.

Because the area below the lowest floor of an elevated building is exposed to flood waters, there is limited coverage in this area for elevated post-FIRM structures, as outlined in the Dwelling Form of the Standard Flood Insurance Policy under Article 6 – Property Not Covered. This provision of the Standard Flood Insurance Policy, effective October 1, 1983, limits coverage for enclosures, including personal property contained therein. Coverage is provided for enclosures below the elevated floors of elevated structures for what are considered to be essential elements; namely, sump pumps, well water tanks, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, and electrical junction and circuit breaker boxes. Also, note that foundation elements that support the building are insurable under the NFIP. Not covered are such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture.

FEMA limited the coverage for enclosed areas below elevated structures and for basement areas, in 1983 due to the financial losses the NFIP experienced when it provided full coverage in these areas. In order to provide insurance coverage for the items that are excluded under the Standard Flood Insurance Policy, FEMA would have to charge significantly higher insurance rates, which would make flood insurance on the building unaffordable for many property owners. The limitation of flood insurance coverage for the enclosed area of an elevated building is consistent with the NFIP floodplain management requirements since these requirements limit the use of the enclosed space to parking, access, and storage, thereby minimizing the damage potential to the building and its contents.

IV. National Environmental Policy Act: Categorical Exclusion (CATEX)

We have reviewed the proposed rule under the requirements of 44 CFR 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act. The above action has been found to qualify for the categorical exclusion on rulemaking relating to actions which themselves are excludable. These exclusions are defined in 44 CFR 10.8(d)(2)(ii) and (iv) regarding inspections, monitoring activities, and actions to enforce local regulations.

The proposed action does not establish any new requirements that Monroe County and the Village of Islamorada must adopt and enforce under the NFIP. Therefore, there is no new Federal action. Rather, this proposed action provides the communities an additional tool to enforce existing requirements in their floodplain management ordinance on illegally built enclosures built below the lowest floor of an elevated building. These existing floodplain management requirements include the requirement that all new and substantially improved structures must be elevated to or above the Base Flood Elevation (non-residential structures can also be dry floodproofed to the Base Flood Elevation so that the structure below the Base Flood Elevation is made watertight). In addition, new construction and substantial improvements to structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with materials resistant to flood damage.

The impacts of the requirements described above for new and substantially improved construction were reviewed as part of the Environmental Impact Statement (EIS) on the 1976 revision to the NFIP Regulations. The basic conclusion of this EIS was that these regulations provide for the reduction or avoidance of adverse impacts caused by unwise development of the Nation's floodplains upon the natural, man-made, and social environments. Specifically, the EIS concluded that implementation of the regulations would not only benefit the environment, but that society would benefit from a more equitable allocation of flood hazard mitigation costs and from the reduction of flood disaster assistance and recovery outlays. Furthermore, the EIS concluded that protection afforded by the program's performance standards and the availability of flood insurance within communities implementing the program regulations would benefit property owners in flood hazard areas, as well as the community itself.

After review of this proposed action and its environmental effects, we have determined that no extraordinary circumstances as defined in 44 CFR 10.8(d)(3) exist regarding this action. The

following potential extraordinary circumstances were considered in determining that this action qualifies as a categorical exclusion:

Greater scope or size than normally experienced for a particular category action:

The scope of this action falls within the scope of what is normally required by communities that participate in the NFIP. All communities throughout the country, as a condition of availability of flood insurance, are required to adopt and adequately enforce the minimum requirements of the NFIP. Over 19,000 communities currently participate in the NFIP. All communities have the responsibility to ensure that structures are properly elevated and that the enclosed space below the lowest floor of an elevated building meets the minimum requirements of the NFIP and the community's floodplain management ordinance. Furthermore, this action falls within the scope of enforcement actions of community probation and potentially suspension from the NFIP that we would normally consider in addressing program deficiencies and violations under the NFIP Community Compliance Program described above in Section II.

Because of the serious nature and the number of possible violations, probation is an option that FEMA would have had to consider if Monroe County and the Village of Islamorada had not indicated a willingness to address the improperly built enclosures below the Base Flood Elevation. Therefore, the communities are being given the assistance through this inspection procedure in addressing the violations to fulfill their responsibilities under the NFIP.

Finally, the scope and size of this action regarding specific community inspections of enclosures and enforcement of local regulations for non-compliant enclosures under the program will be significantly less than placing the communities on probation and potentially suspending the communities from the program. If these communities were to be placed on probation, all of the approximately 29,000 policyholders would be subject to the \$50 surcharge. The communities would be required to remedy any violations. If the communities were to be suspended from the program for failure to adequately enforce their floodplain management ordinance, flood insurance would not be available and the communities would be subject to the sanctions describes above pertaining to Federal financial assistance. With the inspection procedure, only those policyholders with a possible illegally built enclosure would be inspected.

In addition, the inspection procedure will affect only a small percentage of policyholders in Monroe County and the Village of Islamorada. FEMA was originally given an estimate of upwards of 8,000-12,000 structures with illegally built enclosures. We do not believe that this estimate accurately reflects the number of possible illegally built enclosures. In Monroe County and the Village of Islamorada combined, there are over 29,000 flood insurance policies in force. Respectively, there are approximately 3,500 flood insurance policies in force in the Village of Islamorada and approximately 25,500 flood insurance policies in force in Monroe County. Of these totals, Monroe County has approximately 11,000 post-FIRM policies and the Village of Islamorada has approximately 1,700 post-FIRM policies. Under the NFIP, all new construction (post-FIRM structures) and substantially improved Pre-FIRM structures must meet the minimum requirements of the NFIP including requirements that enclosures be used only for parking, building access, and storage and be built with flood resistant materials. The estimate of 8,000-12,000 illegally enclosures would mean that most of the communities' post-FIRM construction is non-compliant. While this would be an extremely serious compliance problem, FEMA believes that the actual number is much lower and that most of the communities' post-FIRM structures are compliant.

Based on the 1995 CAV and discussions with local officials, we have estimated that there are approximately 2,000-4,000 structures with improperly built enclosures within the unincorporated area of Monroe County and the Village of Islamorada combined. Therefore, only a small percentage (approximately 7-14 percent) of the 29,000 policyholders would be affected by the inspection procedure. We believe that this percentage can be applied to the total number of policyholders within each community as a reasonable estimate of policies affected by the inspection procedure.

Based on these figures, this action would affect a small percentage of the total number of insured structures. Moreover, the scope and size of this action are further minimized since the procedure will be carried out over a multi-year period with the inspections themselves staggered throughout the course of the year as flood insurance policies are renewed.

High level of public controversy: It is expected that anytime communities take actions to enforce local laws and ordinances there will be a certain level of controversy. While there exists local public controversy concerning the inspection procedure, we would expect the level of controversy to be no more, and possibly much less than what would be expected if these communities were to be placed on probation and potentially suspended from the program in accordance with existing procedures at 44 CFR 44 CFR 59.24(b) and (c).

Presence of endangered or threatened species and their critical habitat: There are threatened and endangered species (protected by the Endangered Species Act (ESA) and associated statutes) in Monroe County and the Village of Islamorada. A biological opinion was issued on FEMA's administration of the NFIP in Monroe County, Florida in June of 1997. The biological opinion specifies a reasonable and prudent alternative (RPA) to avoid the likelihood of jeopardizing the continued existence of listed species. The RPA establishes a process that allows the U.S. Fish and Wildlife Service (FWS) to provide technical assistance to Monroe County concerning building permit applications that may affect the species. Under the inspection procedure, Monroe County and the Village of Islamorada are responsible for bringing existing post-FIRM structures (structures built after December 31, 1974) with improperly built enclosures into compliance with the minimum requirements of the NFIP and the community's floodplain management ordinance.

A process is already established under the RPA to allow the FWS to provide technical assistance to Monroe County and the Village of Islamorada concerning building permit applications that may affect the species. It is likely that the removal of an improperly built enclosure would fall under the category of activities that are considered minor in scope since this action involves removal of existing building materials and some limited interior building renovations to bring the building into compliance with the minimum requirements of the NFIP and the communities' floodplain management ordinance.

Presence of hazardous substances: Structures that are identified as having an improperly built enclosure will be required to be brought into compliance with the minimum requirements of the NFIP and the communities' floodplain management ordinance. We anticipate that the inspection procedure will result in the removal of building materials and include some limited interior renovations for structures found in violation of the community's floodplain management ordinance. For these cases, the State and/or the local ordinance will cover how the construction debris will be removed and disposed of in a licensed landfill.

Actions with the potential to affect special status areas adversely or other critical

resources: The Coastal Barriers Resources Act of 1982, as amended (16 (U.S.C. 3501 et seq.) (CBRA), established the Coastal Barriers Resources System (CBRS), which is a system of undeveloped coastal barriers along the Atlantic and Gulf of Mexico coasts. Congress established the CBRS units to minimize loss of human life, to eliminate wasteful expenditures of Federal revenues, and to prevent damage to fish, wildlife, and other natural resources. As a result, CBRA prohibits most expenditures of Federal funds that encourage development within the undeveloped, unprotected area in the CBRS, including the sale of Federal flood insurance under the NFIP. The Coastal Barrier Improvement Act of 1990 (Public Law 101-591) expanded many existing CBRS units and added new ones. The NFIP flood insurance ban affects structures built or substantially improved after November 1, 1990, in CBRS areas added by the Coastal Barrier Improvement Act. The Coastal Barrier Improvement Act also recognized “otherwise protected areas.” These areas are lands already protected by public agencies or conservation organizations. Structures built in these areas to support recreation or conservation are eligible for flood insurance.

FEMA identified the units that are in the CBRS on its FIRMS so that insurance agents know where they can sell flood insurance for structures constructed or substantially improved after the establishment of CBRS and the designation of “otherwise protected areas”. In 1998, the Department of the Interior’s Coastal Barriers Study Group recommended including 19,831 acres of land in the Keys within the CBRS in its report to Congress, with 13,059 of these acres in the Lower Keys. In Monroe County, eight (8) percent of total land area is in regular CBRS areas, nine (9) percent is in CBRS areas designated as “otherwise protected areas”, and 83 percent is in non-CBRS areas. Because the inspection procedure affects only existing structures, there are no significant adverse environmental impacts that will affect the CBRS areas designated for Monroe County and the Village of Islamorada.

V. Executive Order (E.O.) 12898, Environmental Justice

On February 11, 1994, President Clinton signed E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”. The E.O. directs Federal agencies “to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States...”

We have determined that the inspection procedure will not have a disproportionate adverse environmental impact on low-income and minority populations in Monroe County and the Village of Islamorada. We have also determined that this action will have some adverse effects on low-income populations because some of the illegal enclosures are used as a full living unit and the residents will have to find replacement housing. However, if these illegal enclosures had not been built in the first place, there would be no need for this inspection procedure or other enforcement actions under the NFIP. Therefore, the effect is caused by the illegal activity and not by this action.

Furthermore, we have determined that there would be a much more significant adverse health and safety impact on the affected low-income populations if they stayed in these illegally built ground level enclosures because they are located in a flood hazard area below the Base Flood Elevation which has a significant risk of flooding. These adverse effects are the direct result of building these illegal enclosures. South Florida is one of the most hurricane-prone regions of the country. As stated above in the “Description of the Proposed Action”, almost the entire County, including the Village of Islamorada, could be inundated by the base flood or 100-year flood (a flood having a one percent chance of being equaled or exceeded in any given year). Buildings in these communities that are not properly protected are extremely vulnerable to flood damage.

If a major hurricane were to strike Monroe County, there would be a much more devastating impact on the low-income populations and the minority populations compared to the effects of this action. The inspection procedure will actually have a beneficial effect by eliminating over time illegally built enclosures that place the lives of people living in these enclosures and their belongings at a significant flood risk. Because this action will be implemented over a multi-year period, it will have the added benefit of giving the communities time to adjust and plan for housing that may be needed as a result of this action. In the event of a major hurricane, the existing problem of available affordable housing in Monroe County would only be compounded. The residents living in these ground level enclosures would be dependent on federal and other disaster assistance and in the long-term might be left without safe, decent affordable housing.

Therefore, this action supports E.O. 12898’s emphasis on protecting the low-income and minority populations from adverse human health and environmental effects.

Review of Impacts on Low-income and Minority Populations:

The inspection procedure would only apply to those insured structures located in the SFHA with enclosures that are identified by the community as a possible violation of the community’s floodplain management ordinance. It is estimated that there are 2,000-4,000 illegally built enclosures below the lowest floor of elevated buildings in SFHAs of both Monroe County and the Village of Islamorada. Exact figures are not available in either community since these enclosures were illegally built. The communities will identify possible violations to submit to FEMA through a review of a list of all pre-FIRM and post-FIRM flood insurance policies in the SFHA and through information from sources such as a windshield survey of the properties in the SFHA, property tax information, and their floodplain development permit files.

For those buildings with enclosures that are identified as a possible violation, the policyholder would receive a notice that an inspection is required prior to renewal of the flood insurance policy. If the policyholder contacts the community for an inspection of the building and based on the inspection, the community identifies a violation under its floodplain management ordinance, the community would have to undertake an enforcement action under its ordinance to remedy the violation to the maximum extent possible. These illegally built enclosures may contain finished living spaces such as a family room, bedrooms, and bathrooms. These illegally built ground level enclosures may also contain full living quarters separate from the elevated portion of the building and used as a rental unit. While many of the illegally built enclosures may be used as a full housing unit or rental unit, a majority are believed to be used as additional living space for the family that lives in the elevated portion of the building. The action will be the same for all illegally built enclosures no matter how the finished enclosed space is used. The enforcement

action by the community under the inspection procedure is expected to result in the removal of illegally built enclosures below the Base Flood Elevation of elevated structures.

Assessment of Impact on Minority Populations: For purposes of E.O. 12898, minority populations are defined as members of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. Using the 1997 U.S. Census estimate for county populations, there are between 13,966 and 18,941 people in this category in Monroe County. This represents between 17 percent and 23 percent of the total population of 81,919 (U.S. Bureau of the Census, 1997 estimate). This figure includes those minority populations located in the Village of Islamorada since it was still a part of the County at the time that this estimate was made. Because the estimated 2,000-4,000 finished enclosures were built illegally and cannot be individually identified, it is impossible to determine conclusively whether this action will have an adverse impact on minority populations.

However, the action will have the beneficial effect of reducing the flood damage potential to the building and reducing the risk to lives by removing the illegally built enclosures. As stated before, there is a significant adverse impact associated with illegally built ground level enclosures in the event of a major hurricane. These adverse effects are created by the construction of the illegal enclosures in the SFHA. Furthermore, if there are minority populations present, many of the same potential impacts discussed below for low-income populations would apply to them.

Assessment of Impact on Low-Income Populations: According to community officials in Monroe County and the Village of Islamorada, the illegal ground level enclosures that are used as living quarters are a source of housing for low- and moderate-income households, housing for senior citizens or other family members living in the unit full- or part-time, and housing for seasonal and vacation users. Community officials from Monroe County have estimated that there are hundreds of illegally built enclosures used as a separate housing unit and that some portion of these units are used for affordable housing. A signed Memorandum of Agreement (December 1999) (attached) between the State of Florida Department of Community Affairs and Monroe County states that “County staff estimates that these illegal downstairs enclosures may contain hundreds of below base flood dwellings serving as living quarters for Monroe County households” and that “an unknown portion of these illegal downstairs enclosures has traditionally provided housing for low and moderate income and working class households”.

Because these finished enclosures were illegally built and do not comply with the community’s floodplain management ordinance, it is not known precisely how many illegally built enclosures below elevated structures are used as a separate housing unit and how many illegally built enclosures are being used as additional living space for the elevated portion of the residence. For the same reason, it is not known how many low-income households occupy these separate housing units in illegally built ground level enclosures.

Based on local estimates of possibly hundreds of illegally built enclosures that may be used as housing units, we have conservatively estimated that there are between 500-800 illegally built enclosures of the estimated 2,000-4,000 illegally built enclosures that may be occupied by low-income households in Monroe County and the Village of Islamorada. We assume that the estimated number of illegally built enclosures occupied by low-income households is fairly evenly distributed throughout the County although there may be some subdivisions with a

greater number of illegally built enclosures than other subdivisions. While we do not have an exact estimate for each community, these estimates indicate that there should not be a disproportionately high adverse environmental impact on low-income populations.

While there should not be a disproportionately high adverse environmental impact on low-income populations, there will be some adverse impact on the estimated 500-800 low-income households living in a housing unit within an illegally built enclosure. The impact on low-income populations will be the result of the removal of the illegal enclosure under the inspection procedure. Consequently, low-income households will need to find replacement housing.

However, finding replacement housing may be a problem for the affected low-income population. Local officials have indicated that the availability of affordable housing is a problem throughout the County. There are also limitations on the amount of housing that can be built in the communities in any given year. It is FEMA's understanding that most of the communities in Monroe County, including the County, are under a State mandated Rate of Growth Ordinance (ROGO). This ordinance establishes the number of residential dwelling units, including the number of affordable housing dwelling units that can be built in a given year, which cannot be exceeded. The purpose of the ROGO is to protect property owners and others from the devastating effects of a natural disaster and to establish a rate of growth that is commensurate with the County's ability to maintain a reasonable and safe hurricane evacuation clearance time. There are other market conditions that have also impacted the availability of affordable housing, such as availability of land and financing. These and related issues on affordable housing are further addressed in the Monroe County Year 2010, Comprehensive Plan Technical Document, dated April 15, 1993.

Under these conditions, the affected low-income population may have difficulty finding appropriate replacement housing. In addition, the affected low-income populations may also find it difficult to find affordable replacement housing near their jobs, schools, transportation, and other needed services. As a result, they may have to pay a disproportionate amount of their income on housing if appropriate housing cannot be found nearby.

In comparison, if the illegally built enclosures were allowed to remain, the impact of a hurricane on the affected low-income population would be much worse. Allowing uses other than parking, access, or storage in the enclosed area below the Base Flood Elevation significantly increases flood damages to the building. If the ground-level enclosure is finished as a separate housing unit or other finished living spaces, there is an increased risk to lives. Low-income households and other residents, who live in these ground-level enclosures, may not be fully aware of the severity of the flood risk. As described in section III of this document, flood insurance is not available for contents located in these illegally built enclosures. As a result, the affected low-income households living in these enclosures will not have financial support through flood insurance coverage to replace their personal belongings.

Moreover, while the shortage of housing will be a major problem in general in the event of a major hurricane, it will become a crisis situation for the low-income populations living in illegally built ground level enclosures. Flooding and the coastal storm surges resulting from a major hurricane event could damage or destroy a number of these illegally built enclosures used as full living units along with other housing. Property owners will not be able to repair the illegal enclosure as finished living space or as a full housing unit since it is not allowed under the

community's floodplain management ordinance. The affected low-income population would be dependent on federal and other disaster assistance and temporary housing in the short-term. With limited financial assistance available, the impact will be especially devastating to the low-income population living in these illegal ground level enclosures. The low-income population living in these enclosures may not be able to financially compete for the available housing in the County. As a result, the affected population may be left without replacement housing in the long-term and they may have to relocate outside the County thereby placing additional economic and other burdens on the household.

In comparison, the inspection procedure will be carried out over a multi-year period and the inspections themselves will be staggered throughout the year as flood insurance policies are renewed. Over time, buildings will become compliant and they will have a greater level of flood protection. The potential for loss of life will be reduced. Consequently, this procedure allows the communities to make appropriate adjustments to plan for the needed replacement housing and to ensure that its citizens are protected from the devastating effects of a hurricane.

This action also supports ROGO which is tied to the County's hurricane evacuation plan. As stated above, it is designed to establish a rate of growth that is commensurate with the County's ability to maintain a reasonable and safe hurricane evacuation clearance time. Illegally built enclosures that have full housing units may effectively exceed the Dwelling Unit Allocation System for new residential development, thereby jeopardizing the County's goal of safeguarding the public against the effects of hurricanes and tropical storms.

Even though there is no adverse environmental impact on special populations, the following steps will be taken to address non-environmental impacts.

1) Implementation of the inspection procedure will be over a multi-year period:

FEMA will closely coordinate with each community to determine the appropriate time frame to implement the inspection procedure to give each community adequate time to complete the inspections and undertake enforcement actions. It is expected that the inspection procedure will be implemented over a multi-year period with the actual inspections also staggered during the course of a year. This will help to minimize the potential for large numbers of low-income households to be displaced in any given year and at any given time. It will also give the communities the opportunity to implement policies and plans as described below to ensure that affordable housing units for households potentially displaced under the inspection procedure are available.

2) Steps are being taken by Monroe County to provide replacement housing:

The Monroe County Board of County Commissioners approved an *Affordable Housing Action Plan* at its November 10, 1999 meeting. The first part of the action plan directs the County Planning Department to prepare a Memorandum of Agreement (MOA) between the County and the Department of Community Affairs (DCA) that would allow the County to receive credit for those affordable housing units that were counted in the ROGO, and could be lost due to the removal of illegal ground level enclosures.

On December 27, 1999, the DCA signed this MOA, thereby enabling Monroe County to add 90 ROGO credit units to its year eight (8) allocations (Attachment). The agreement allows Monroe County to add up to 90 housing unit credits through July 13, 2002 to its ROGO allocation as replacement housing for affordable housing units in enclosures removed as a result of the implementation of the inspection procedure.

The 90 credits can only be applied to those units that qualify as “affordable housing” as defined by the Monroe County Code. The Agreement provides for an amendment to adjust the number of ROGO credits should the County’s report document the removal of more than 30 housing units in illegally built enclosures. It is FEMA’s understanding that any housing units illegally created after 1990 do not qualify for the ROGO credits since they were not included in the 1991 Hurricane Evacuation Study upon which the ROGO annual residential dwelling unit allocation is based. However, under the ROGO allocation, at least 20% of the annual allocation is for affordable housing. This annual allocation for affordable housing could be used for those low-income households living in an illegal enclosure created after 1990.

The second part of the action plan directs the County Planning Department to identify potential suitable sites for the construction of attached affordable housing. In addition, the County is looking at other considerations to improve the availability of affordable housing such as developing partnerships with private developers to encourage development of affordable housing and evaluating zoning regulations to increase opportunities to build affordable housing units.

The Village of Islamorada incorporated in 1998 and joined the National Flood Insurance Program as a participating community on October 1, 1998. The Village is currently working to put in place plans, programs, and procedures affecting land use. We will work with the Village of Islamorada to pursue similar efforts for additional ROGO credits with the State of Florida Department of Community Affairs should it be necessary.

FEMA encourages both communities to continue efforts to develop plans, programs and procedures to provide affordable housing in order to minimize impacts resulting from the implementation of the inspection procedure.

3) Public Notices will be given to the public regarding implementation of the inspection procedure:

The proposed rule provided criteria for notices. Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate. FEMA will also publish a notice in the **Federal Register** that the communities will undertake an inspection procedure. Published notices will include the purpose of implementing the inspection procedure. Policyholders of insured structures will receive three specific notices:

- 1) After the start date, the policyholder will receive an endorsement to their Standard Flood Insurance Policy that an inspection may be required;
- 2) For buildings identified by the communities as a possible violation, the insurer would send a notice to policyholders approximately six (6) months before the policy expiration date. This notice would state that the policyholder must obtain an inspection from the community and

- submit the results of the inspection as part of the renewal of the flood insurance policy by the end of the renewal grace period (30 days after the date of the policy expiration); and
- 3) The insurer would send a reminder notice to the policyholder with the Renewal Notice about 45-60 days before the policy expires.

We will closely coordinate with the communities to ensure that there is adequate notification to the public in general and the affected population throughout the implementation phase of the inspection procedure.

VI. Executive Order 11988, Floodplain Management and Executive Order 11990 Protection of Wetlands

This action does not establish any new requirements that communities must adopt and enforce under the NFIP. Furthermore, the inspection procedure is not a programmatic-wide change to the NFIP, but the application of existing program requirements to a specific situation. As stated above, the proposed action provides the communities an additional tool to bring existing buildings with illegally built enclosures into compliance the communities' Floodplain Management Ordinance. Therefore, this action complies with the 8-step process in accordance with 44 CFR 9.5(f).

VII. Listing of Entities Consulted

- Federal Insurance Administration for flood insurance data.
- Monroe County, Florida, local officials
- Village of Islamorada, local officials

Attachment: Memorandum of Agreement between State of Florida Department of Community Affairs and Monroe County

The action in the proposed rule to establish an inspection procedure has been found to comply with the requirements under 44 Code of Federal Regulations Part 10, Environmental Considerations and under the mandates of the National Environmental Policy Act and associated statutes.

Brent Paul, Environmental Officer